

Court No. - 8

Case :- FIRST APPEAL FROM ORDER No. - 1086 of 2014

Appellant :- U.P.Rajya Sadak Parivahan Nigam Throu Its Regional Manager

Respondent :- Kanchan Kumar Srivastava And Ors.

Counsel for Appellant :- Akhter Abbas, Akhilesh Kumar Srivastava

Counsel for Respondent :- Om Prakash Srivastava, Atul Kumar Srivastava, Gaurav Mishra, Om Prakash Srivastava, Shantenu Mishra

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the appellant and Sri O.P. Srivastava learned counsel for the respondents.

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 challenging the award dated 08.09.2014 passed by the Motor Accident Claims Tribunal (hereinafter referred to as M.A.C.T) whereby claim petition nos.197 of 2011 and 220 of 2011 were partly allowed and a sum of Rs.16,75,720/- along with interest @ 6% p.a. has been awarded in favour of the claimant respondents.

A Division Bench of this Court by means of the order dated 19.12.2014 while admitting the appeal had granted an interim protection subject to deposit of the entire amount under the award, out of which 50% was directed to be released in favour of the claimant respondents.

Sri Akhilesh Kumar Srivastava learned counsel for the appellant has made a two pronged submission.

(i) It is urged that the case set up by the claimant respondents indicating that the deceased died on account of rash and negligent driving of the bus driver (belonging to U.P.S.R.T.C) was not established. It is further urged that on behalf of claimant Kanchan Kumar Srivastava, s/o deceased, examined himself as a witness, however, in his cross examination, he admitted the fact that he was not present at the time when the incident occurred. Thus, the tribunal erred in accepting the statement of the claimant witness and treating him to be an eye witness.

On the other hand, the driver as well as conductor of the bus

appeared in the witness box and both of them clearly deposed before the Tribunal that the driver was driving the bus at a very slow speed as he was entering the bus depot and the deceased was jostled by other co-passengers as a result of which she fell and came under the wheels of the bus. Apparently, this did not amount to any rash or negligence of the bus driver. Since this statement of the witnesses could not be shaken, hence, the finding returned by the Tribunal on issue no.1 relating to rash and negligent driving was not made out.

(ii) It is further submitted that without conceding to first limb of the argument it is urged that the quantum which has been awarded by the Tribunal is also on the much higher side since the tribunal did not consider the deduction of income tax from the salary of the deceased. Had the tax been deducted the quantum would have been lower and this aspect has also not been noticed by the tribunal.

Thus, for the aforesaid reasons, the award dated 08.09.2014 passed by the M.A.C.T, Pratapgarh in Claim Petition nos.197 of 2011 and 220 of 2011 deserves to be set aside and the claim petition be dismissed.

Sri O.P. Srivastava learned counsel for the private respondent has submitted that even though Kanchan Kumar Srivastava may not have been present at the given moment when the accident occurred but the fact remains that he was in the premises of the bus stand where he had gone to see off his mother. It is also urged that the statement of the bus driver and the conductor was such that it clearly indicated rash and negligence driving coupled with the fact that the manner in which the accident occurred the same could not have been merely on the ground that the deceased was jostled by other co-passengers. It is further urged that as per the evidence on record the deceased came under the wheel of the bus and she was crushed and had died on the spot and this amplifies the rash and negligence of the bus driver. Moreover, it is urged that there was a discrepancy in the statement of both the bus driver and the conductor hence, it cannot be said that the issue regarding rash and negligent driving has been incorrectly decided by the Tribunal.

Sri Srivastava further urged that the deceased was drawing a gross salary of Rs.23,530/- per month as she was working on the post of Hostel Warden/Superintendent in the department of District Social Welfare, Jaunpur. It is also urged that her income was within taxable limits hence, tax has not been deducted and on this account the award does not require to be interfered with hence, the appeal is without merit and deserves to be dismissed.

The Court has heard learned counsel for the parties and also perused the material on record.

Before advertng to the respective submissions, it will be gainful to briefly take note of the facts giving rise to the instant appeal.

Smt. Kamla Devi was the mother of Kanchan Kumar Srivastava who died in a motor accident which led to filing of claim petition no.197 of 2011 seeking compensation on account of death of his mother whereas another claim petition bearing no.220 of 2011 was filed by Kuldeep Kumar Srivastava and others who were also the other sons of deceased Kamla Devi. Both the claim petitions were connected together and were decided by a common award dated 08.09.2014.

As per the case set out in the claim petition, it was stated that Smt. Kamla Devi was aged about 57 years and was working with the District Social Welfare Office in Jaunpur on the post of Hostel Warden/Superintendent. On 17.08.2011, Smt. Kamla Devi in order to go Pratapgarh went to Jaunpur bus stand and was waiting for the bus going to Pratapgarh. It was stated that bus bearing no.UP70BT8279 was being driven rashly and negligently and it crushed Kamla Devi who died on the spot. An FIR was lodged in respect of the said incident by the son of the deceased against the bus driver which came to be registered as Case Crime no.1247 of 2011. It was also stated that the deceased was earning about Rs.23,530/- per month. Hence, on her death the claimants were entitled for compensation.

The claim petitions came to be contested by the U.P.S.R.T.C and they filed a written statement denying the fact of rash and negligent driving. It was specifically stated that the driver of the bus was driving the bus very slowly as he was entering the depot. Since, a number of passengers wanted to board the bus, hence, in that sudden rush, Smt. Kamla Devi was jostled by some co-passengers, as a result she fell and came under the wheels of the bus. The manner in which this incident occurred does not reflect any rashness and negligence on the part of the bus driver. It was also urged that claimants are not entitled to the compensation, hence, the claim petition be dismissed.

The Tribunal upon the pleadings of the parties framed three issues:

- (i) whether the death of Kamla Devi was on account of rash and negligent driving of the bus driver ?
- (ii) whether the deceased was responsible for the accident and

as to whether she contributed to the accident ?

(iii) whether the claimants are entitled to any compensation ?

On behalf of the claimants, Kanchan Kumar Srivastava was examined as a witness and he filed documentary evidence in shape of the FIR, the charge sheet, the site plan and other documents including the salary certificate of his deceased mother. On behalf of defendants, the bus driver Chhotey Lal and the Conductor Sri Romesh Dwivedi were examined as witnesses.

Taking note of the evidence both oral and documentary, the Tribunal found that the death of Smt.Kamla Devi was on account of rash and negligent driving of bus driver and it also found that the deceased was 57 years of age and considering her net income applying the appropriate multiplier and future prospects, awarded a sum of Rs.16,75,720/- along with 6% interest by means of the award dated 08.09.2014. This is the award which is under challenge in the above appeal.

The issue for consideration before this Court is:

(i) whether the issue of rash and negligent driving has been appropriately decided by the Tribunal.

(ii) whether the compensation amount is just and adequate.

In so far as the first issue regarding rash and negligent driving is concerned, from record it would revealed that Kanchan Kumar Srivastava indicated that he had gone to see off his mother to Jaupur Bus Station. It is also stated that Smt. Kamla Devi was crushed by the bus bearing no.UP70BT8279 and that too in the premises of the bus station at Jaunpur and the bus is owned and operated by the U.P.S.R.T.C.

The statement of Chhotey lal, the bus driver stated that while he was entering the bus stand he had seen a number of passengers rushing towards the bus to board it and it is in the aforesaid context that the deceased was jostled by some co-passenger and she fell and was crushed under the wheels of the bus. However, he denied any suggestion of rash and negligent driving.

The Conductor Romesh Dwivedi on the other hand stated that the deceased slipped from the bus and fell under it on account of slush created by the rain.

Having taken note of the evidence of the respective parties, the foundational facts which could not be disputed is that

Smt.Kamla Devi was within premises of the bus station and she had gone to board the bus in question going towards Pratapgarh. It also could not be disputed that she had died on account of being crushed under the wheel of the Bus no.UP70BT8279 which was being driven by Chhotey Lal.

The record further indicates that Sri Chhotey was prosecuted as the FIR was lodged against him for rash and negligent driving and further he was chargesheeted. In light of the aforesaid facts and circumstances, it cannot be said that the bus driver was not negligent. The very fact that Kamla Devi died and the accident is admitted and in the premises of a bus station is enough for a foundational fact, and the accidental death was found to be from the use of the motor vehicle. Whether she slipped from the bus on account of slush caused by the rain or she was jostled by any co-passengers, but, the undisputed fact is, that she fell and came under the wheel of the bus which caused her death. In view thereof, this Court is satisfied that the finding returned by the Tribunal on account of rash and negligent driving cannot be said to be perverse to require the interference of this Court, hence, the same is affirmed.

As far as the issue of compensation is concerned, suffice to state that salary certificate was brought on record indicating that the deceased was earning Rs.23,530/- per month as salary. Her age has been confirmed by evidence being 57 years of age. On both the account i.e. quantum of salary as well as age of the deceased, no contrary evidence was led by the U.P.S.R.T.C.

In this view of the matter, the only contention that now survives as to whether the amount taken for the purposes of computing the compensation should be Rs.23,530/- per month or the deduction in tax must be factored. In this context, it cannot be disputed by the respondent that the employer must have been deducting the tax at source while making the payment of the salary to the deceased. It was very easy for the claimants to have brought on record the ITRs (Income Tax Returns) of the deceased coupled with the fact that Form-16-A under the Income Tax Act could also have been produced to indicate how much tax was being deducted and despite deduction of tax from the salary at source, if ultimately the salary of the petitioner would not have been taxable for the said assessment year then she would have been entitled to refund and the refund vouchers could also have been brought on record, however, there is no evidence brought on record by the claimants in this regard.

Submission of learned counsel for the appellant that the tribunal should have factored for the deduction of tax from the salary of the deceased may be correct, however, the primary

responsibility and duty of this Court while considering an appeal under Section 173 of the Motor Vehicles Act, 1988 where quantum is under challenge to see whether the amount awarded by the tribunal is just and fair compensation.

Examining the issue of grant of quantum in light of submissions made by the learned counsel for the appellant and the amount which has been awarded by the tribunal, it is noticed that the tribunal has taken salary of the deceased at Rs.23,530/- per month, whereafter, the requisite deductions for H.R.A etc has been made taking the income to be Rs.22,700/- per month, upon which, 1/3rd has been deducted for personal expense and noticing the age of the deceased at 57 years future prospects has been factored at 15% and, thereafter, multiplier of 8 has been adopted. A sum of Rs.16,70,720/- has been computed, upon which Rs.5,000/- has been added towards funeral expense, and thus, a total sum of Rs.16,75,720/- along with 6% interest has been awarded.

If the issue of grant of compensation is seen, apparently, the tribunal has not factored for the grant of any compensation in terms of consortium and loss of estate and even the amount as granted toward funeral expense is at pittance. Apparently, from the dictum of the Constitution Bench decision of the Apex Court in ***National Insurance Company Ltd vs Pranay Sethi; (2017) 16 SCC 680*** the multiplier which has been adopted is on the lower side. The deduction towards personal expenses which has been made of 1/3rd, does not appear to be correct as it should be 1/4th noticing the number of dependants hence, if these factors are taken note of, the compensation is to be redetermined by this Court it would necessarily exceed the amount which has already been awarded by the tribunal.

Moreover, this matter has been pending before this Court since, 2014 and even though, the matter had been heard on earlier occasion, yet there has been no endeavour on part of the respondent to either seek enhancement of compensation nor to make or file any cross appeal in so far as quantum is concerned and even during the course of argument today, there has been no prayer on behalf of claimant respondent in this regard.

Hence, taking a holistic view, this Court even though finds that the submission of learned counsel for the appellant regarding the non-deduction of tax to be correct but at the same time even though if it is taken note of yet the compensation would exceed even after factoring for the aforesaid deduction, hence, this Court is not inclined to interfere in the award.

For the aforesaid reasons, the Court finds that the appeal does

not have merit and is consequently **dismissed** and the award dated 08.09.2014 passed in Claim Petition nos.197 of 2011 and 220 of 2011 by M.A.C.T, Pratapgarh is affirmed. Any amount deposited before this Court and if not released in favour of the claimants shall be remitted forthwith to the tribunal for its being released in favour of the claimant respondents as per the award. Any amount remaining shall also be make good to the claimant respondents within a period of six weeks from today.

The record of the Tribunal shall be remitted to the tribunal forthwith.

Order Date :- 23.9.2024

Harshita